

HOUSE BILL NO. 242

INTRODUCED BY R. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE OPERATION OF CITIZENS BAND RADIO EQUIPMENT THAT HAS NOT BEEN AUTHORIZED BY THE FEDERAL COMMUNICATIONS COMMISSION; ~~REVISING THE DEFINITION OF "PUBLIC UTILITY"; PROVIDING FOR ENFORCEMENT BY THE PUBLIC SERVICE COMMISSION; REQUIRING THE COMMISSION TO ADOPT RULES; A PRIVATE RIGHT OF ACTION; AND PROVIDING A PENALTY; PROHIBITING A LOCAL GOVERNMENT FROM ADOPTING LESS STRINGENT STANDARDS; AMENDING SECTION 69-3-101, MCA; AND PROVIDING EFFECTIVE DATES.~~"

WHEREAS, on November 22, 2000, President Clinton signed into law Public Law 106-521; and

WHEREAS, Public Law 106-521 grants to the states and local governments the authority to prohibit the operation of certain high-power citizens band radio equipment that has not been authorized by the Federal Communications Commission; and

WHEREAS, Public Law 106-521 was enacted because the Federal Communications Commission does not have the personnel to enforce its own regulations governing use of high-power citizens band radio equipment that has not been approved by the Commission; and

WHEREAS, the regulation by the state of unauthorized citizens band radio equipment will assist operators of amateur radio services, sometimes called "ham" radio, in that it will reduce the ham radio frequency interference resulting from the operation of the illegal equipment and will also assist consumers by reducing interference with television, cordless telephone, and commercial radio reception; and

WHEREAS, it is appropriate for the Legislature to prohibit the operation of unauthorized citizens band radios; ~~to require the Public Service Commission to enforce the prohibition, and to require the Public Service Commission to adopt rules consistent with Public Law 106-521 and the rules of the Federal Communication Commission to aid in the enforcement of the prohibition~~ AND TO PROVIDE A PRIVATE RIGHT OF ACTION FOR THE ENFORCEMENT OF THE PROHIBITION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~Section 1. Section 69-3-101, MCA, is amended to read:~~

~~—————"69-3-101. Meaning of term "public utility". (1) The term "public utility", within the meaning of this chapter, shall embrace includes every corporation, both public and private, company, individual, association of individuals, and their lessees, trustees, or receivers appointed by any court whatsoever, that now or hereafter in the future may own, operate, or control any plant or equipment, any part of a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal:~~

~~————(a) heat;~~

~~————(b) street-railway service;~~

~~————(c) light;~~

~~————(d) power in any form or by any agency;~~

~~————(e) except as provided in chapter 7, water for business, manufacturing, household use, or sewerage sewer service, whether within the limits of municipalities, towns, and villages or elsewhere;~~

~~————(f) regulated telecommunications service.~~

~~————(2) The term "public utility" does not include:~~

~~————(a) privately owned and operated water, sewer, or combination systems that do not serve the public;~~

~~————(b) county or consolidated city and county water or sewer districts as defined in Title 7, chapter 13, parts 22 and 23; or~~

~~————(c) a person exempted from regulation as a public utility as provided in 69-3-111; or~~

~~————(d) citizens band radio equipment regulated by the commission pursuant to [section 2]."~~

NEW SECTION. Section 1. Regulation of unauthorized citizens band radio equipment -- penalty

-- exception -- ~~commission to adopt rules~~ PRIVATE RIGHT OF ACTION. (1) A person may not operate a citizens band radio that has not been authorized by the federal communications commission.

~~————(2) The commission may issue orders and take other acts necessary to prevent the violation of subsection (1).~~

~~(3)~~(2) A person who operates a citizens band radio in violation of subsection (1), ~~the rules of the commission, or an order issued by the commission~~ is subject to a civil penalty of a maximum of \$500, to be paid to the commission after an opportunity for a hearing held pursuant to the contested case procedure of the Montana Administrative Procedure Act. ~~The commission may bring a civil action in the county in~~

~~which an unauthorized radio is located to collect the penalty provided for in this section. A penalty collected by the commission pursuant to this section must be deposited in the general fund COLLECTED AS PROVIDED IN THIS SECTION.~~

~~(4)(3) Subsection (1) does not apply to a radio licensed by the federal communications commission pursuant to 47 U.S.C. 301.~~

~~(5) The commission shall adopt rules to implement this section. The rules must be compatible with Public Law 106-521 and the regulations of the federal communications commission.~~

~~(6) A county, consolidated local government, municipality, or town may not adopt or enforce an ordinance intended to implement Public Law 106-521 that is less stringent than the provisions of this section and the rules of the commission adopted to implement this section.~~

(4) AN INDIVIDUAL MAY BRING A CIVIL ACTION IN THE DISTRICT COURT OF A COUNTY IN WHICH THE INDIVIDUAL RESIDES TO COLLECT THE CIVIL PENALTY PROVIDED FOR IN THIS SECTION, PREVENT THE OPERATION OR CONTINUED OPERATION OF A CITIZENS BAND RADIO THAT HAS NOT BEEN AUTHORIZED BY THE FEDERAL COMMUNICATIONS COMMISSION, OR BOTH. THE ACTION MAY BE BROUGHT PURSUANT TO THIS SECTION AND TITLE 27, CHAPTER 19, AND THIS SECTION OR PURSUANT TO OTHER APPLICABLE LAW.

(5) PROOF OF OPERATION, OWNERSHIP, OR OTHER CONTROL OVER THE OPERATION OF THE RADIO AND LACK OF AUTHORIZATION BY THE FEDERAL COMMUNICATIONS COMMISSION CONSTITUTE PROOF OF A VIOLATION OF SUBSECTION (1).

(6) AN INDIVIDUAL WHO SUBSTANTIALLY PREVAILS IN AN ACTION BROUGHT PURSUANT TO THIS SECTION MUST BE AWARDED COSTS AND REASONABLE ATTORNEY FEES.

NEW SECTION. Section 2. Codification instruction. [Section 2 1] is intended to be codified as an integral part of Title ~~69~~ 27, CHAPTER 1, PART 7, and the provisions of Title ~~69~~ 27, CHAPTER 1, PART 7, apply to [section 2 1].

~~NEW SECTION. Section 4. Effective date. (1) Except as provided in subsection (2), [this act] is effective October 1, 2001.~~

~~(2) [Sections 2(5), 3, and this section] are effective on passage and approval.~~

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